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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,816	05/15/2001	Andrew C. Braisted	9491-053-27 DIV	1579

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

LUKTON, DAVID

ART UNIT	PAPER NUMBER
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1654

MAIL DATE	DELIVERY MODE
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05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/854,816

Applicant(s)

BRAISTED ET AL.

Examiner

David Lukton

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 6, 7, 10, 13 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 9, 11 and 14 is/are rejected.
- 7) ☒ Claim(s) 4, 12 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Pursuant to the directives of the response filed 2/14/07, claims 4, 8, 11, 12, 14 have been amended. Claims 1-4 & 6-16 remain pending. Claims 1-3, 6, 7, 10, 13, 16 remain withdrawn from consideration. Claims 4, 8, 9, 11, 12, 14, 15 are examined in this Office action.

Applicants' arguments filed 2/14/07 have been considered and found persuasive in part. The previously imposed prior art rejections are withdrawn, as is the rejection under 35 U.S.C. §112-1st.



Claim 4 is objected to. This claim recites the following:

“A compound selected from the group consisting of: the compound represented by formula (I)...”

Here, there are two consecutive colons; the language is somewhat superfluous. Either of the following would be sufficient:

A compound of formula (1):

- or -

A compound selected from the group consisting of compounds of formula (1):



Claims 8, 9, 11, 14 are rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 8 makes reference to the form “gabcde”, “defgab”, etc. However, this is meaningless without reference to figure 18, and even then is somewhat cryptic. It is suggested that at least some information from figure 18 be imported into claim 8, so that at least some meaning can be gleaned from the claim.

In response to the foregoing, applicants have argued essentially that if the skilled peptide chemist were presented with an amino acid sequence, he (or she) would know at once whether or not the sequence is encompassed by the claim. The examiner disagrees. Nevertheless, applicants are invited to explain which of the following that they believe falls within the scope of the claim, and which do not:

EIDNYT
NQQERN
EFGNRE
NEKLRN
WEKLRS

If applicants believe that one (or more) of these fails to qualify as an “amino acid substituted variant”, what would be the reason for this conclusion?

- Claim 9 is drawn to a compound of claim 4 that further comprises a group designated S’. However, claim 9 is not properly subgeneric to claim 4

In response, applicants have argued that it would be clear from a reading of claim 4 that S’ can be attached to X. However, there is nothing in the language of claim 4 to suggest this. It remains the case that claim 9 is not properly subgeneric to claim 4. The best option would be to cast claim 9 in independent form; alternatively claim 4 could be amended to make reference to variable S’.

- Claim 14 recites the term “therapeutically treating” once, the term “therapeutically treated” once, and the term “therapeutically effective” once. However, this seems somewhat redundant. The following is suggested:

A method of treating a mammal infected with HIV comprising administering to the mammal a therapeutically effective amount of a compound of claim 8.

- Claim 11 is drawn to a compound in which “Z” is a peptide consisting of six amino acids of a consensus sequence as displayed in any of figures 16A-16G. However, it is not readily apparent which sequences are to be included and which are to be excluded. The best option would be to incorporate only the most

relevant information from the figures into claim 11. In response, applicants have argued that they would be able to determine which sequences are included, and which are excluded. Perhaps this is true; but for the skilled artisan endeavoring to fathom what might be encompassed, the claim is somewhat cryptic.



THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.



It is suggested (but not yet required) that applicants amend claim 16 to delete reference to claim 10, and to further amend claim 16 to recite what else is present (e.g., an adjuvant) that qualifies the composition to be a vaccine. Note that a compound (*per se*) is not a vaccine and a vaccine is not a compound *per se*.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (571)272-0562. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

A handwritten signature in black ink, appearing to read "D. Lukton". The signature is fluid and cursive, with the first letter of the last name being a large capital "L".

DAVID LUKTON, PH.D.
PRIMARY EXAMINER